

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

PARNELL COLVIN,

Case No.: 2:20-cv-01765-APG-EJY

Plaintiff

Order Granting in Part Motion to Dismiss and Granting Unopposed Motion to Strike

M.J. DEAN CONSTRUCTION, INC.,

[ECF Nos. 22, 23]

Defendant

8 Plaintiff Parnell Colvin sues defendant M.J. Dean Construction, Inc. for alleged
9 employment discrimination. ECF No. 21. M.J. Dean moves to dismiss Colvin's fourth cause of
10 action for negligent hiring, training, and supervision, arguing that Colvin has failed to allege
11 facts making it plausible that M.J. Dean knew or should have known that Colvin's supervisor,
12 Kevin Gutierrez, would discriminate or retaliate against Colvin. M.J. Dean also moves to strike
13 the reference to Does and Roes in the complaint because the deadline for amending to add new
14 parties has expired. Colvin responds that he has adequately alleged that he complained to
15 management about Gutierrez's discriminatory conduct, yet M.J. Dean placed him back under
16 Gutierrez's supervision and Gutierrez then fired him for pretextual reasons. Colvin does not
17 oppose the motion to strike the Does and Roes. ECF No. 27.

18 I dismiss the negligent hiring portion of the claim because Colvin has not plausibly
19 alleged negligence in M.J. Dean's hiring of Gutierrez. However, I deny the motion as to
20 negligent training and supervision because Colvin has plausibly alleged that M.J. Dean knew
21 about Gutierrez's alleged discriminatory conduct and not only failed to redress it, but placed
22 Colvin back under Gutierrez's supervision, and Gutierrez fired him for pretextual reasons. I
23 grant the motion to strike as unopposed.

1 **I. ANALYSIS**

2 In considering a motion to dismiss, I take all well-pleaded allegations of material fact as
3 true and construe the allegations in a light most favorable to the non-moving party. *Kwan v.*
4 *SanMedica, Int'l*, 854 F.3d 1088, 1096 (9th Cir. 2017). However, I do not assume the truth of
5 legal conclusions merely because they are cast in the form of factual allegations. *Navajo Nation*
6 *v. Dep't of the Interior*, 876 F.3d 1144, 1163 (9th Cir. 2017). A plaintiff must make sufficient
7 factual allegations to establish a plausible entitlement to relief. *Bell Atl. Corp. v. Twombly*, 550
8 U.S. 544, 556 (2007). Such allegations must amount to “more than labels and conclusions, [or] a
9 formulaic recitation of the elements of a cause of action.” *Id.* at 555.

10 **A. Negligent Hiring**

11 “The tort of negligent hiring imposes a general duty on the employer to conduct a
12 reasonable background check on a potential employee to ensure that the employee is fit for the
13 position.” *Hall v. SSF, Inc.*, 930 P.2d 94, 98 (Nev. 1996) (quotation omitted). “An employer
14 breaches this duty when it hires an employee even though the employer knew, or should have
15 known, of that employee’s dangerous propensities.” *Id.*

16 Colvin has not alleged any facts that make it plausible that M.J. Dean knew or should
17 have known of Gutierrez’s alleged propensity to engage in discriminatory conduct before it hired
18 him. I therefore dismiss the portion of Colvin’s claim that alleges negligent hiring.

19 **B. Negligent Training and Supervision**

20 An “employer has a duty to use reasonable care in the training, supervision, and retention
21 of his or her employees to make sure that the employees are fit for their positions.” *Id.* at 99.
22 “The tort of negligent training and supervision imposes direct liability on the employer if (1) the
23 employer knew that the employee acted in a negligent manner, (2) the employer failed to train or

1 supervise the employee adequately, and (3) the employer's negligence proximately caused the
2 plaintiff's injuries." *Helle v. Core Home Health Servs. of Nev.*, 124 Nev. 1474, 238 P.3d 818,
3 2008 WL 6101984, at *3 (Nev. 2008) (internal footnotes omitted) (citing *Hall*, 930 P.2d at 99;
4 *Oehler v. Humana, Inc.*, 775 P.3d 1271, 1272 (Nev. 1989)).

5 Colvin alleges that M.J. Dean knew that Gutierrez acted in a discriminatory manner
6 because he complained about Gutierrez in an Employee Incident Investigation Report, and he
7 was told by one of M.J. Dean's directors that Gutierrez would be fired. ECF No. 21 at 4.
8 Gutierrez was not fired. *Id.* Instead, Colvin was placed under a different supervisor, but when
9 that supervisor left, Colvin was placed back under Gutierrez's supervision despite his earlier
10 complaint. *Id.* at 4-5. Finally, he alleges Gutierrez fired Colvin based on an alleged lack of work,
11 but employees outside of Colvin's protected class who had less seniority were not terminated due
12 to a lack of work and others were called back to do Colvin's job. *Id.* He also contends that M.J.
13 Dean subsequently posted job listings at the union, and thus was looking for laborers, further
14 undermining Gutierrez's claimed reason for Colvin's termination. *Id.*

15 It is reasonable to infer from these allegations that, despite knowing of Gutierrez's
16 alleged discriminatory conduct, M.J. Dean failed to adequately train or supervise him and instead
17 put him in a position to discriminate and retaliate against Colvin, resulting in Colvin's pretextual
18 termination. I therefore deny M.J. Dean's motion to dismiss Colvin's negligent training and
19 supervision claim.

20 **II. CONCLUSION**

21 I THEREFORE ORDER that defendant M.J. Dean Construction, Inc.'s motion to dismiss
22 (**ECF No. 22**) is **GRANTED** in part. Plaintiff Parnell Colvin's claim for negligent hiring is
23 dismissed. The motion is denied in all other respects.

1 I FURTHER ORDER that defendant M.J. Dean Construction, Inc.'s motion to strike
2 **(ECF No. 23) is GRANTED as unopposed.** The references in the first amended complaint to
3 Does and Roes are stricken.

4 DATED this 9th day of July, 2021.



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6 ANDREW P. GORDON
7 UNITED STATES DISTRICT JUDGE
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